

MEMORANDUM

TO: Planning Commission

FROM: Jerry D. Sanders, Assistant County Attorney

DATE: July 19, 2006

MEETING DATE:

RE: REVISIONS TO MONROE COUNTY CODE, SECTION 9.5 – 21
(Board of county commissioners)

I. BACKGROUND

The proposed changes to Section 9.5 – 21 of the Monroe County Land Development Regulations (LDRs) change the requirement that land use matters be heard at the Monroe County Board of County Commissioners (BOCC) meeting location closest to the subject property. Since the BOCC only meets once per month and rotates its meetings among Key West, Marathon and Key Largo, this requirement often meant that property owners and Monroe County would have to wait three months or more for issues to be heard more than once. The new language allows for such matters to be heard not only at the BOCC meeting location closest to the subject property, but also at the BOCC meeting location *next* closest to the subject property.

II. SUMMARY

The proposed changes are as follows:

1. The language of Section 9.5 – 21 is clarified and made more orderly and easy to read and interpret.
2. The requirement that land use matters be heard at the BOCC meeting location closest to the subject property is changed to allow land use matters to be heard at the BOCC meeting location closest to the subject property *OR* next closest to the subject property.

III. FINDINGS OF FACT

1. The current language in Section 9.5 – 21 of the Land Development Regulations states the policy that the BOCC will hear and take action on land development matters at the BOCC meeting site closest to the subject property; and

2. Such a meeting location requirement inhibited the ability of the BOCC to take action on land development matters at consecutive BOCC meetings; and
3. Such a meeting location requirement often forced property owners to wait three meetings or more of The BOCC before the matter concerning their property could be heard a second time and acted upon; and

IV. PROPOSED TEXT CHANGE

1. Please see the attached Ordinance.
2. The Growth Management Director and the DRC recommend that the provision for meeting in the next closest location apply only to affordable housing projects or development applications.

V. RECOMMENDED ACTION

Based on the findings of fact, it is proposed that the Planning Commission recommend **APPROVAL** of the proposed text change to Section 9.5 – 21 of the Monroe County Land Development Regulations.

ORDINANCE NO. -2006

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 9.5-21; PROVIDING FOR THE ABILITY OF THE BOCC TO HEAR AND ACT UPON LAND USE MATTERS AT BOCC MEETING SITES CLOSEST AND NEXT CLOSEST TO THE SUBJECT PROPERTY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING AN EFFECTIVE DATE AND; PROVIDING FOR FILING IN THE OFFICE OF THE SECRETARY OF STATE OF THE STATE OF FLORIDA AND TRANSMITTAL TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, the Monroe County Board of County Commissioners (BOCC), after public hearing, has reviewed and considered the proposed amendments to the Land Development Regulations (LDRs), comments of the public, recommendations of the Planning Commission, recommendations of staff, and other matters; and

WHEREAS, the BOCC hereby makes the following Findings of Fact:

1. The current language in Section 9.5 – 21 of the Land Development Regulations states the policy that the BOCC will hear and take action on land development matters at the BOCC meeting site closest to the subject property; and
2. Such a meeting location requirement has inhibited the ability of the BOCC to take action on land development matters at consecutive BOCC meetings; and
3. Such a meeting location requirement forced property owners to wait for two or perhaps three meetings of The BOCC before the matter concerning their property could be heard a second time and acted upon; and

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Section 9.5, Monroe County Code, is hereby amended to read as follows:

Sec. 9.5-21. Board of county commissioners.

In addition to any authority granted the board of county commissioners by state law or the Code of Ordinances of Monroe County, the board of county commissioners shall have the following powers and duties:

- (a) To adopt and amend the official land use development map and existing conditions map after recommendation by the planning commission;
- (b) To initiate amendments to the text of this chapter and the plan;

- (c) To hear, review and adopt amendments to the text of these regulations after recommendation by the planning commission;
- (d) To act upon applications for variances from the elevation requirements of the floodplain management regulations of the plan;
- (e) To designate and appoint a hearing officer to make recommendations in regard to determinations of vested rights or such other decisions as the board may deem appropriate;
- (f) To take such other action not delegated to the planning commission as the board of county commissioners may deem desirable and necessary to implement the provisions of these regulations and the plan; and
- (g) **To hear and act upon applications for** ~~The following board hearings may be held in Key West, Marathon or Plantation Key/Key Largo areas depending on which site is the closest to the property involved:~~ conditional use permits which are also developments of regional impact or are to be the subject of development agreements; plat approvals; floodplain management variances; **appeals of the planning director's decisions on impact fees;** **amendments to the land use district maps; and any other item which the board, in its discretion, decides should be heard; and to make adoptions** of findings of fact and orders for beneficial uses and vested rights; designations of archaeological, historical or cultural landmarks; designations of areas of critical county concern or any modification of such designations; ~~appeals of the planning director's decisions on impact fees; amendments to the land use district maps; and any other item which the board, in its discretion, decides should be heard at a specific site.~~ **The above-referenced hearings and adoptions shall take place at the board's meeting site in Key West, Marathon or Key Largo, whichever is closest to the subject property or at the board's meeting site which is next closest to the subject property.** In the event a proposed area of critical county concern will affect various properties a portion of which are closest to one (1) hearing site and a portion of which are closest to another, then at least one (1) hearing shall be held at each site before any final board action may be taken.
- (h) In the case of conditional use permits which are also developments of regional impact or are conditional use permits which are to be the subject of development agreements under section 163.3225 et seq., Florida Statutes, then the county commission shall conduct such public hearings and grant or deny the conditional use permit approval as required by general law.
- (i) To establish, by resolution, a schedule of fees to be charged by the growth management division (GMD) to persons filing land development permit applications, land development approval applications, and land development order applications however styled, and any land development order appeal however

styled. In establishing the fee amounts, the GMD director shall present evidence to the board of the cost incurred by the GMD in staff time, and material expended, that are usually required to review the particular item that is the subject of the proposed fee. The overall general administrative and operational overhead of the GMD may not be included in the fee amount. While mathematical exactitude is not required, no fee adopted by the board pursuant to this subsection may be in excess of the amount reasonably supported by the evidence submitted by the GMD director regarding the staff time incurred, and material expended, usually required for the review of the particular item that is the subject of the proposed fee. Any fee resolution considered by the board pursuant to this subsection must be heard by the board at a time certain public hearing with public notice provided in the same manner as the public notice required for the adoption of an ordinance under F.S. § 125.66(2)(a). At the public hearing, members of the public must be afforded an opportunity to comment on the proposed fees. The fees established shall generally be nonrefundable; provided, however, the GMD director may approve a refund of up to fifty (50)percent of the fee upon good cause shown by the applicant and the finding that the refund will not result in GMD staff time costs or material costs already expended going unreimbursed.

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Section 2. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, cause or sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 3. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any federal or state law, rule, code or regulation, the more restrictive shall apply. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict. However, the suspension of conflicting laws or rules as provided for under F.S. 252.46(2) is intended to and shall apply.

Section 4. Filing.

This ordinance shall be filed with the Office of the Secretary of State of the State of Florida and shall not become effective prior to or without a notice issued by the Florida Department of Community Affairs or Florida Administration Commission approving the ordinance.

Section 5. Transmittal.

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

Section 5. Effective Date.

This ordinance shall become effective as provided by law and stated above. Where Comprehensive Plan amendments may be required in order for any part of this ordinance to be deemed consistent with the Comprehensive Plan, the effective date of such part shall be as of the effective date of the required Comprehensive Plan amendment and as otherwise required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the ___ day of _____, 2006.

Mayor Charles "Sonny" McCoy	_____
Mayor Pro Tem Dixie Spehar	_____
Commissioner George Neugent	_____
Commissioner David Rice	_____
Commissioner Glenn Patton	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk

Approved as to form:

County Attorney